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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 STEPHEN B. TURNER,

No. C 12-6231 MMC

11 Plaintiff,

12 v.

**ORDER DENYING PLAINTIFF'S MOTION
FOR JUDGMENT BY DEFAULT**

13 DUSTIN TIERNEY,

14 Defendant.

15 /
16 Before the Court is plaintiff Stephen B. Turner's Motion for Judgment by Default,
17 filed January 18, 2013, by which motion plaintiff seeks entry of default judgment against
18 defendant Dustin Tierney pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.
19 Default judgment may not be entered prior to entry of default by the Clerk of Court. See
20 Brooks v. United States, 29 F. Supp. 2d 613, 618 (N.D. Cal. 1998) aff'd, 162 F.3d 1167 (9th
21 Cir. 1998) (denying motion for default judgment where clerk had not entered defendant's
22 default; holding "default judgment may be entered only upon the entry of default by the
23 Clerk of the Court"); Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 783 (8th Cir. 1998)
24 (holding "entry of default under Rule 55(a) must precede grant of a default judgment under
25 Rule 55(b)"). In the instant case, the Clerk of Court, on January 25, 2013, denied entry of
26 default.

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1 Accordingly, default not having been entered, plaintiff's motion is hereby DENIED.
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4 **IT IS SO ORDERED.**
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7 Dated: January 25, 2013
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MAXINE M. CHESNEY
United States District Judge